

Republic of Iraq
Federal Supreme Court
Ref. 167 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 31/8/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: deputy director of Korek Telecom/ being in this capacity – his agents the barristers Ayad Ismaeel Mohammed and Hindreen Othman.

The Defendants: 1. Federal Minister of Finance/ being in this capacity – his agent the official jurist Amir Mashhid Khdhim.

2. Director-General of the Federal General Commission of Taxes/ being in this capacity – his agent the official jurist Ala'a Alwan Humaidi.

3. the decision of the Erbil federal appeal Court in its cassation capacity by the number (27/ Ta Qaf/2021) issued on 4/10/2022.

4. Speaker of Iraq Kurdistan Parliament/ being in this capacity – his agents, each of the legal counselor Ph.D. Waadi Suleiman and the official jurist Sharmeen Khudhar.

The Claim

The plaintiff claimed through his agents that the Court of First Instance of Erbil issued its state order dated 26/8/2019 containing ((Suspension of the executive procedures of the Defendants'

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Department in collecting tax and fee benefits until the resolution of the case in the number (926/Beh 2/2019)), and after the agent of the first and second defendants filed a grievance with the Court of First Instance of Erbil, the concerned court issued its decision No. (346/Grievance/Beh 2/2019) on 15/2/2021 to dismiss the complainant's application and uphold the state order. Then the agent of the first and second defendants appealed the appeal decision to the Erbil District Court of Appeal in its discriminatory capacity and the appeal was recorded sequentially (27/Ta Qaf/2021), and the Erbil Court of Appeals, in its capacity as the cassation, decided to overturn the distinctive decision, and its decision stated that "... It was found to be incorrect and contrary to the law because it was issued contrary to the specific jurisdiction of the court where initially the courts do not hear any claim related to the assessment and collection of tax ... Following the provisions of Article (55) of the Income Tax Law...), since this decision was based on the reasons for its reasoning for an ineffective legal text, a detailed regulation was submitted to the trial court on 7/4/2022 clarifying that Article (55) of the Income Tax Law No. (113) of 1982 no longer exists after the issuance of Law No. (17) of 2005 as amended by Law No. (3) of 2015, according to which all legal texts that prevent courts from hearing cases wherever they are received were repealed, and exceptions were canceled, and this was supported by what was approved by the Federal Court. Supreme Council by its decision No. (142/Federal/2018) issued on 1/3/2022, on the date of the pleading, corresponding to 16/5/2022, he submitted an attached regulation summarizing the request for the implementation of the text of Article (4) of the Bylaw of Procedure of the Federal Supreme Court No. (1) of 2005, and tasked him (i.e. the plaintiff) to file a lawsuit to determine the legality of the text of

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Article (55) referred to above and then take the necessary action as specified in the Bylaw of the Court, mentioned above, so the plaintiff asked the Federal Supreme Court to accept the case by arguing the unconstitutionality of the text of Article (55) of the Income Tax Law No. (113) of 1982 Applicable in the Kurdistan Region, obliging the fourth defendant to implement the amendments contained in Income Tax Law No. (113) of 1982. The case was registered with this court in the number (167/federal/2022) in accordance with Article (21/1st) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and informs the defendants of its petition and documents in accordance with Article (21/2nd) of the same Bylaw, mentioned above, and the agent of the first defendant replied with the answer regulation dated 11/8/2022 to conclude that Law No. (3) of 2015 ((First Amendment Law of the Law on the Abolition of Legal Texts that Prohibit The courts from hearing cases No. (17) of 2005 on which the plaintiff bases his claim is an unconstitutional law by stipulating its validity (retroactively) and this violates the provisions of Article (19/9th) of the Constitution of the Republic of Iraq of 2005, which stipulates that "the laws shall not have retroactive effect unless otherwise specified, and this exception does not include the laws of taxes and fees", and the law No. (3) of 2015 mentioned above did not address the repeal of the provisions governing litigation procedures stipulated in the income tax laws, and for the foregoing reasons and other reasons contained in the regulation, the first defendant's agent requested the dismissal of the lawsuit from his client, and the plaintiff charged fees, expenses, and fees. The second defendant's agent replied in the answering draft dated 7/8/2022 to conclude that the litigation against his client is not achieved based on the provisions of Article (80) of the Civil Procedure Law No. (83) of 1969 as amended, and Article

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(3) of the Law of the Ministry of Finance No. (92) of 1981 as amended, so he asked the Federal Supreme Court to dismiss the plaintiff's claim in form and charge him fees, expenses, and fees. The agents of the fourth defendant replied with the reply regulation received by the court on 4/9/2022 summarizing that the case is to be answered because the court had already decided on a case of similar subject matter No. (142/Federal/2018) on 1/3/2022 and ruled to dismiss the plaintiff's claim, On the other hand, since the constitutionality of a provision denying the interest was already decided upon the re-initiation of the lawsuit to challenge the unconstitutionality, the plaintiff's interest when filing the lawsuit is considered negated as required by Article (20/1st) of the Bylaw of the Federal Supreme Court No. (1) of 2022 and the litigation is not directed against their client in this lawsuit, which requires its return from a formal point of view, as their client represents a legislative body and not an executive body so that he can be obliged to implement the alleged amendments. It is even up to the executive branch and has nothing to do with it at all, so they asked the Federal Supreme Court to dismiss the plaintiff's claim while charging him fees and expenses. After completing the procedures provided for in the rules of procedure of the Court, mentioned above, an appointment was set for the pleadings in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day the Court convened, the plaintiff did not attend or his agent despite their notifying according to the law, the agents of the first and the second defendants attended and the fourth defendant did not attend despite of his notifying according to the law. The public in-presence argument proceeded, and the Court noticed that what was listed in the case of the plaintiff and what was listed in the petition of the

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fourth defendant. The agents of the first and the second defendant replied and requested to reject the case against their clients for the reasons listed in the answering drafts attached to the case's papers, the agents of the first and second defendants repeated their previous sayings and requests. Whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the conclusion of the plaintiff's lawsuit, the authorized director of Cork Telecom in addition to his job, is to request the ruling of the unconstitutionality of the text of Article (55) of the Income Tax Law No. (113) of 1982 in force in the Kurdistan Region and to oblige the fourth defendant, the Speaker of the Iraqi Kurdistan Parliament, in addition to his job, to implement the amendments contained in the Income Tax Law No. (113) of 1983 for the reasons detailed above, for the public present pleading, and to inform the court of the reasons for the lawsuit. The applications contained therein, as well as the regulations submitted by the agents of the parties to the lawsuit, noted that the subject matter of this lawsuit has been submitted to this court in the numbered case (142/Federal/2018) which ended with the court's decision on its subject matter by decision No. (142/Federal/2018 dated 1/3/2022), which ruled that the text of Article (55) of the Income Tax Law No. (113) of 1982 was repealed by Law No. (17) of 2005 and the court ruled to dismiss the plaintiff's claim for the reasons contained in the decision and since the rulings of this court and under Article (94) of the Constitution of

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the Republic of Iraq are absolute authority vis-à-vis all, since the constitutional lawsuit is a lawsuit in kind if it relates to the constitutionality of legislative texts and that the authenticity and bits The decisions of this court are transformed by itself and the dispute is re-submitted again for the review, even if the parties to the case change because the lesson is in its subject matter. Accordingly, and for a previous decision on the same subject of this case, the FSC decided to reject the case of the deputy director of Korek Telecom Company/ being in this capacity and to burden him with the judicial expenses, including the advocacy fees for the agents of the first, second, and fourth defendants/ being in their capacity, each of the official jurist Amir Mashhad Khadhim on behalf of the first defendant, and the official jurist Ala'a Alwan Humaidi on behalf of the second defendant, and the legal counselor Ph.D. Waadi Suleiman Al-Mazouri, the legal counselor Warya Saady, and the official jurist Sharmeen Khudhar on behalf of the fourth defendant amount of one hundred thousand Iraqi dinars divided between the agents of the defendants equally. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/1st and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 7/Sufur/1444 Hijri coinciding 4/September/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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